# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~262.~~ 13

WILLIAM K. McMILLEN, PLAINTIFF IN ERROR,

vs.

ROBERT K. ANDERSON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

**FILED SEPTEMBER 24, 1875.**

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To the honorable Wade H. Hough, judge of the thirteenth judicial district court of Louisiana, in and for the parish of Carroll:

The petition of William L. McMillan, who resides in the parish of Carroll, Louisiana, with respect represents—

That on the 16th day of April, A. D. 1873, one Robert K. Anderson, representing himself to be State tax-collector of the parish of Carroll, pretended to seize and take into his possession a certain store-building and the contents thereof, belonging to your petitioner, and situated in the parish of Carroll aforesaid.

Petitioner shows that the said pretended seizure was made, as the said Anderson alleged, for the purpose of enforcing the payment of your petitioner's license; but on account of what particular trade or avocation the said license was due, or by virtue of what statute the same was demanded, or what was the amount of the same, your petitioner has never been informed.

Petitioner further shows that, on the 18th day of April, A. D.
2 1873, the said Anderson, without any provocation or excuse whatsoever, (so far as your petitioner is informed, and as he verily believes,) proceeded to force an entrance into the store-building aforesaid, belonging to your petitioner, and having overcome your petitioner's clerk by superior numbers, he compelled him to deliver up the key of the store-building aforesaid; and he, the said Anderson, took violent possession and control of the same, and placed in charge thereof Charles I. Sweet, an employé and clerk of the said Anderson.

Petitioner further shows that, on the 19th day of April, A. D. 1873, your petitioner's clerk and agent recovered possession of the store-building aforesaid, and proceeded to close up the same by nailing down the windows, locking and barring the doors, and otherwise manifesting his intention of shutting up the establishment; but on the afternoon of the same day, to wit, the 19th day of April, A. D. 1873, the said Anderson came to your petitioner's store-building aforesaid, with a considerable body of men, and overpowering your petitioner's clerk, and disregarding his remonstrances, proceeded in a violent, unseemly manner to batter down the building with an axe, and succeeded in effecting an
3 entrance by demolishing the window-shutter and shattering the sash and window-glass; and the said Anderson did thereupon enter the store-building with a number of persons, who acted under his direction, and proceeded to remove therefrom and carry away in carts and wagons a large amount of personal property belonging to your petitioner, consisting of corn, oats, pork, sugar, coffee, and tobacco, the same being well worth the sum of five hundred dollars.

Petitioners further shows that the said Anderson has caused to be inserted and published in the Lake Republican, a newspaper printed and issued in the parish of Carroll, an advertisement, in which he, the said Anderson, announces that he will sell on Saturday, the 3d day of May, 1873, the store-building aforesaid and the contents thereof, (although no inventory of the said contents has ever been made,) or so much of the same "as shall satisfy the amount due for State license," but by whom the said license is due, or the amount of the same, the said Anderson does not specify.

Petitioner shows that no notice of the aforesaid pretended seizure has ever been served upon him, or upon any one legally author-
4 ized to represent him in such a proceeding, nor was any time allowed for payment after the said seizure, but your petitioner's

property was seized and advertised for sale on the same day, to wit, the 16th day of April, 1873.

Petitioner further shows that the said Anderson announces his intention to sever a portion of your petitioner's store-building from the realty, and to first offer for sale, on the pretended sale-day aforesaid, the front doors of the building aforesaid, and to cut them from the hinges, and to deliver them to a purchaser, whom he says he has already found and bargained with.

Petitioner avers that the aforesaid acts and proceedings on the part of said Anderson are flagrantly illegal, oppressive, and unjust.

Shows that said Anderson is not State tax-collector of the parish of Carroll, never having been legally appointed to fill said office.

Shows that the pretended act of the general assembly approved by W. P. Kellogg, on the 14th day of March, 1873, under which the said Anderson is assuming to act, is not a legal and binding statute of the State of Louisiana, the same never having passed both houses of the general assembly, and been approved by the governor, as required by the constitution.

5 Shows that, even if the said pretended act had passed both houses of the general assembly, and been approved by the governor, the same is unconstitutional, null, and void, because its object, so far as relates to the collection of licenses, is not expressed in its title, as required by article 114 of the constitution of Louisiana, and, further, because if the said pretended act authorizes the proceedings on the part of said Anderson hereinbefore set forth, the same is null and void because in violation of article 9 of the constitution of Louisiana, which provides that "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, shall not be violated."

And your petitioner further avers that any statute of the State of Louisiana which may justify or seem to justify the aforesaid proceedings on the part of said Anderson in breaking into your petitioner's store, without the warrant or authority of any court of justice, is null and void, and of no effect, because in violation of the Constitution of the United States, and particularly the 1st section of the 14th amendment to said Constitution, which provides that "no State shall make or enforce

6 any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law."

And your petitioner further avers that the said pretended act purporting to have been approved on the 14th day of March, 1873, (if the same be of any binding force, which your petitioner denies,) cannot be held to apply to State licenses due and demandable on the 1st day of January, 1873, because, so far as relates to said licenses, the same would be an ex post facto, a retroactive law, and therefore in violation of article 110 of the constitution of Louisiana and of the 3d paragraph of the 9th section of the Constitution of the United States.

Petitioner shows that, by the loss of his property, violently taken and carried off; by the breaking and battering of his store-building; by the interruption and disorder in his affairs caused by the said lawless proceedings; by the attorneys' fees and costs of court, which he is compelled to pay in order to secure redress; and by the outrage to his feelings, and the wilful violation of his rights and immunities as a citizen of the United States, he has been damaged in all to the amount of ten thousand dollars, for which the said Anderson is wholly responsible,

7 and which he is justly and legally bound to make good to him.

Wherefore, the premises considered, petitioner prays that the said Robert K. Anderson, who resides in the parish of Carroll, may be cited to answer hereto; that he may be served with a copy of this petition, and that, after due legal proceedings, your petitioner may have judgment against him for the said sum of ten thousand dollars, with 5% interest from judicial demand, and all costs of suit.

Petitioner further prays that a writ of injunction issue, and that the said Robert K. Anderson be commanded and enjoined not to proceed any further in the seizure, sale, or advertisement of your petitioner's property, and not to hinder or interfere with your petitioner or his employees in the management and control of his said property, until the further order of your honorable court in the premises, when the legality of the aforesaid proceedings shall have been judicially ascertained and determined.

Your petitioner further prays that, on trial hereof, the said injunction may be made perpetual, and for all general and equitable relief.

J. EDWARD LEONARD, *Atty.*

8 Before me, the undersigned authority, personally came and appeared J. Edward Leonard, attorney for William L. McMillen, who, being sworn, deposes and says that the said McMillen is now absent from the State, and the statements contained in the foregoing petition are true, to the best of affiant's knowledge and belief, and that the district judge is now absent from the parish of Carroll.

J. E. LEONARD.

Sworn to and subscribed before me this 22d day of April, 1873.

C. A. DE FRANCE,
*Parish Judge.*

Upon reading and considering the foregoing petition and affidavit, it is ordered that a writ of injunction issue, as prayed for, upon plaintiff giving bond and solvent security in the sum of ten thousand dollars, conditioned according to law.

Done and signed at chambers this 22d day of April, A. D. 1873.

C. A. DE FRANCE,
*Parish Judge.*

(Endorsed:) 6060. Petition filed April 22d, 1873. W. M. Abbott, d'y clerk.

*Injunction bond.*

STATE OF LOUISIANA,
*Parish of Carroll:*

9 13th dist. court.

WILLIAM L. McMILLEN
*vs.*
R. K. ANDERSON. } No.

Know all men by these presents, that we, William L. McMillen, as principle, and J. E. Leonard, as security, are held and firmly bound unto R. K. Anderson in the sum of ten thousand dollars, lawful money of the United States of America, to be paid to the said Anderson, or his legal

representatives, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, firmly by these presents, this the 22d day of April, A. D. 1873.

Whereas the said McMillen has this day presented a petition for an order thereon to the clerk of said court, authorizing and requiring him to issue a writ of injunction:

Now, the condition of the above obligation is, that we, the above-bound McMillen and Leonard, will well and truly pay the said Anderson, or his legal representatives, all such damages as may be recovered against us in case it should be decided that the injunction was wrongfully obtained.

W. L. McMILLEN,
Per J. E. LEONARD.
10 J. E. LEONARD.

(Endorsed:) Filed and approved April 22d, 1873. W. M. Abbott, d'y clerk.

*Authorization to sign bond.*

NEW ORLEANS, LA., *April* 12, 1873.

W. L. McMILLEN }
*vs.*
R. K. ANDERSON. }

I hereby authorize and empower J. E. Leonard to sign for me and in my name any injunction-bond which I may be required to furnish in the above-entitled cause.

W. L. McMILLEN.

*Citation.*

STATE OF LOUISIANA,
*Parish of Carroll:*

13th judicial district court.

WM. L. McMILLEN }
*vs.* } No. 6060.
R. K. ANDERSON. }

The State of Louisiana and said court to R. K. Anderson, residing in said parish and State, greeting:

You are hereby summoned either to comply with the demand contained in the petition of the said Wm. L. McMillen, a duly certi-
11 fied copy of which accompanies this citation, or to deliver your answer to the said petition, in writing, in the office of the clerk of said court, held at Providence, in said parish, within 10 days after service hereof, and according to law. Hereof fail not, under penalty of the law.

Witness the honorable Wade H. Hough, judge of the said court, and the seal of the said court, this 23d day of April, in the year of our Lord 1873.

(Delivered.) W. M. ABBOTT, *D'y Clerk.*

Received within citation, together with a certified copy of same and a certified copy of plaintiff' petition on Wednesday, the 23d day of April, A. D. 1873, and on same day of same month and year made service of same by handing said copies to R. K. Anderson, in person, in the parish of Carroll, La.

NICHOLAS BURTON, *Sheriff*,
By W. H. BENHAM, *D'p'ty.*

(Endorsed:) Returned and filed April 25, 1873. W. M. Abbott, d'p'ty clerk.

*Writ of injunction and return.*

WILLIAM L. McMILLEN
*vs.* } 6060.
R. K. ANDERSON.

STATE OF LOUISIANA,
*Parish of Carroll Court:*

12 To R. K. Anderson, of said parish and State, greeting:

Whereas William L. McMillen has filed in the office of the clerk in and for said parish his petition, with an affidavit of facts alleged therein, praying that the said R. K. Anderson be enjoined and directed not to proceed any further in the seizure, sale, or advertisement of the property of W. L. McMillen, and not to hinder or interfere with the said McMillen, or his employees, in the management and control of said property; and the said McMillen having obtained from the judge an order for an injunction, as prayed for, and given bond and security as required in said order, you are therefore commanded and strictly enjoined, in the name of the State of Louisiana and said court, to comply with the said prayer of plaintiff's petition, until further orders of said court in the premises.

Witness the honorable Wade H. Hough, judge of the said court, and the seal of said court, this 23d day of April, in the year of our Lord 1873.

DAVID JACKSON, *Clerk*,
By W. M. ABBOTT, *D'p'y.*

Received within writ of injunction on Tuesday, the 22d day of
13 April, together with a certified copy of same, and on same day, month, and year made service by handing said copy to R. K. Anderson, in person, in the parish of Carroll, La.

NICHOLAS BURTON, *Sheriff*,
By W. H. BENHAM, *D'p'y.*

(Endorsed:) Returned and filed April 26th, 1873. Wm. Abbott, d'p'y clerk.

*Petition to set aside injunction, with order of parish judge.*

To the Hon. Wade H. Hough, judge of the 13th district, and holding sessions in and for the parish of Carroll, Louisiana:

The petition of Robert K. Anderson, a resident of your said parish and State, respectfully represents that he has been appointed tax-collector for your said parish and State by his excellency William Pitt Kellogg, governor of the State of Louisiana, and that he has been regularly

commissioned and qualified as such; that, acting in his official capacity he called upon William L. McMillen, also resident of your said parish and State, to pay to the State of Louisiana the sum of one hundred dollars, due as a license-tax, for the reason of his being a public
14 merchant selling goods, and also because of his selling whiskey by retail, which said tax was due for the year ending December 31, 1873; that he was notified by said McMillen personally and by letter, of which due publication was made, that he intended resisting the collection of taxes; that your petitioner gave him due notice, according to law, and, at the expiration of the ten days, proceeded to seize the store and contents of said store belonging to said McMillen, to satisfy the amount due the State; that he obtained possession of the key of said store, but was, together with his keeper, forcibly and violently ejected therefrom. Now, your petitioner avers that he has seized and wishes to sell a certain amount of property, amounting to two hundred dollars in value, belonging to said McMillen, but that he is restrained therefrom by an order of your hon. court, enjoining him from proceeding any further with said sale; that he has released the seizure as to the realty, and that the said McMillen can receive no injury from the said sale of his said goods, inasmuch as petitioner has simply complied with the law as directed in act No. 47, "to enforce the payment of taxes due the State," &c., approved March 14, A. D. 1873; and that public policy
15 as well as justice requires that the taxes due the State shall be promptly collected; and that the said sale will not work an irreparable injury, inasmuch as the said McMillen is still carrying on his business.

Wherefore petitioner prays that the order granting an injunction be set aside on plaintiff's entering into bond, as required, at the discretion of the court, and that he be allowed to proceed with the sale of the goods seized belonging to said McMillen; prays for costs and for all necessary orders and for general relief.

GORHAM, *Atty.*

Personally came and appeared before me, the undersigned authority, Robt. K. Anderson, tax-collector in and for the parish of Carroll and State of Louisiana, who, being duly sworn, deposes and says that all the facts and allegations contained in the foregoing petition are correct, and true, and that the district judge is now absent from the district.

R. K. ANDERSON.

Sworn to and subscribed before me this 23 day of April, 1873.

C. A. DE FRANCE,
*Parish Judge.*

(Endorsed:) Filed April 24, 1873. W. M. Abbott, d'y clerk.

16 *Bond for dissolution of injunction.*

STATE OF LOUISIANA,
*Parish of Carroll, District Court:*

W. L. McMILLEN
*vs.* } No. 6060.
R. K. ANDERSON.

Know all men by these presents that we, Robert K. Anderson, and Robert K. Anderson, tax-collector, as principle and Charles H. Nash

and Geo. C. Benham, as security, are held and firmly bound unto William L. McMillen in the sum of five hundred dollars, lawful money of the United States of America, to be paid to the said William L. McMillen, his heirs, executors, administrators, and assigns, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, firmly by these presents, this the 23 day of April, A. D. 1873.

Whereas the said Robt. K. Anderson hath this day presented a petition for an order dissolving the order of injunction obtained in the above-entitled suit: Now, the condition of the above obligation is, that the above-bound Robt. K. Anderson and Chas. H. Nash will deliver the property in dispute in the same state in which it was at the moment of issuing the injunction, or the value thereof, and will well and truly pay the said William L. McMillen, his heirs, executors, administrators,
17 and assigns, all such damages as may be recovered against us in case it should be decided that the order of dissolution of injunction was wrongfully obtained.

R. K. ANDERSON, *Tax-Collector.*
R. K. ANDERSON.
CHAS. H. NASH.
GEO. C. BENHAM.

(Endorsed :) Bond approved and filed April 24, 1873.

*Answer of R. K. Anderson, tax-collector.*

Thirteenth judicial district court of La., parish of Carroll, May term, 1873.

WM. L. MCMILLEN
*vs.*
ROBT. K. ANDERSON.

And now comes defendant, by his undersigned counsel, and, for answer, denies generally and specially each and every allegation in plaintiff's petition contained, except that he did seize and advertize for sale certain articles of merchandise in the store of plaintiff, who is a merchant, carrying on, through his clerk and agents, a mercantile business at Elton, in said parish.

Respondent alleges affirmatively that his said acts were in pursuance and in discharge of his duty as tax-collector of State &
18 parish taxes and licenses in said parish, to which office he has been legally appointed, commissioned, qualified, and sworn; wherefore respondent, in said capacity as collector, prays that the demands of plaintiff be rejected, that the injunction sued out herein be dissolved, with one hundred per centum of the amount of license or tax due by said plaintiff, under the act of the legislature, May 14, 1873, and fifty dollars attorney's fees, incurred in defending this injunction, for costs, and for all general and equitable relief.

HIRAM R. STEELE,
*Dist. Atty.* 13 *Dist.*

(Endorsed :) Filed May 28, 1873. C. E. Moss, jr., d'y clerk.

*Answer of R. K. Anderson, individually.*

Thirteenth district court, Parish of Carroll, May term, 1873.

WM. L. MCMILLEN
*vs.*
ROBT. K. ANDERSON.

And now comes Robt. K. Anderson, who has answered herein as State and parish collector in and for said parish and State, and alleges now, individually, that he made the seizure and advertisement as set
19 forth, in said capacity of collector; that so far as said suit may be against him individually, that it is frivolous and vexatious, and that the allegations are not true, and strict proof is demanded; that they are, moreover, injurious and defamatory, and have damaged your petitioner in his individual and official reputation to the extent of two hundred and fifty dollars, which he pleads in addition to the demand in first answer in reconvention, and for which he asks judgment; that the demand of plaintiff for damages be rejected, with costs, and for all general and equitable relief.

C. A. DE FRANCE, *Atty.*

(Endorsed:) Filed May 28, 1873. C E. Moss, jr., d'y clerk.

*Minutes, May* 28, 1873.

W. L. MCMILLEN
*vs.* 6060.
R. K. ANDERSON.

Case taken up and trial proceeded with.

20 *Minutes, May* 30, 1873.

W. L. MCMILLEN
*vs.* 6060.
R. K. ANDERSON.

Case taken up and trial proceeded with.

*Minutes, June* 2, 1873.

W. L. MCMILLEN
*vs.* 6060.
R. K. ANDERSON.

Case taken up and trial proceeded with.

*Minutes, June* 3, 1873.

W. L. MCMILLEN
*vs.* 6060.
R. K. ANDERSON.

Case proceeded with, evidence closed, argument, and case taken under advisement.

*Evidence.*

W. L. McMILLEN
*vs.* } 6060. Note of evidence.
R. K. ANDERSON.

Admitted by defendant that on the 16 of April, 1873, the defendant placed a colored man named Anderson Crenshaw on guard as keeper of the plaintiff's store. Defdt. did not effect an entrance into the store at that time. The next day a man named John Miller was placed
21 on guard outside. On the morning of the 18th day of April, 1873, the defendant demanded the keys of the store from Mr. Myers, agent for plaintiff. On the same day deft. took out the stops of one of the windows, lifted the sash out very carefully, two men alternately holding Mr. Myers. Deft. then placed C. I. Sweet in charge of the store. The next day the agent recovered possession of the store.

On the 19th of April, 1873, defdt. came to plaintiff's store with four men; defdt. broke through the windows of the wareroom to the store with an axe; smashed some glass and window-sash. There was one hundred and fifty dollars' worth of forage in the wareroom. There was, in addition to the feed and flour referred to, seventy-five dollars' worth of other merchandise.

Defendant admits that he pushed open the door between the store and the wareroom.

Defendant admits that the merchandise taken from the store was taken to Lake Providence.

F. L. MYERS, sworn for plaintiff, states that defendant took from plaintiff's store 20 sacks of corn, worth $40; also 2 sacks of oats,
22 worth $7.50 each = $15.00; one sack of coffee, weighing ninety-seven pounds, worth about twenty-five dollars; one barrel of whiskey, worth about sixty dollars, in witness' opinion; a lot of meat worth about twenty-five dollars; one caddy of tobacco, worth about twelve dollars; one-half a caddy of tobacco, worth about six dollars; one barrel of sugar, worth about thirty dollars.

Witness says it would cost about twenty-five dollars to repair the building where Mr. Anderson had injured it.

Witness states that defendant made his first entrance into the main building, and that it was the same building of which he recovered possession of Mr. Sweet.

W. W. BENHAM, sworn, states that he borrowed one barrel of whiskey of the property seized by the defendant. Said barrel of whiskey and about one-half of its contents are now at Oakland; the other half is gone, and witness does not know where.

F. F. MONTGOMERY, sworn, states that, considering the importance of this question, he thinks attorney's fees would be small enough at one thousand dollars, but, considering the amount involved in this
23 particular case, one hundred dollars would be enough; states that it is worth the same to defend that it is to prosecute.

J. W. MONTGOMERY, sworn, states that he would not do the labor plaintiff's attorney has already done in this case for less than two hundred or two hundred and fifty dollars. Witness states that he would think, to carry this suit to a final issue, and maintain the principles con-

tended for in the suit, ten thousand dollars would only be a fair compensation; that is to say, to carry it through the Supreme Court of the United States; and if he was in Gen'l McMillen's place, he would pay that amount for a successful issue in the Supreme Court of the United States.

Cross-ex.:

For dissolving this injunction, witness thinks that, for a common lawyer, it would be worth two hundred & fifty dollars.

Defendant here admits that the advertisement of the sale of plaintiff's property, here appended and marked "A," remained in the newspaper after the injunction issued in this case.

DOCUMENT A, REFERRED TO.

24 [Ext. of "Lake Republican," issue of 26th April, 1873.]

*Tax-collector's sale.*

OFFICE OF STATE TAX-COLLECTOR,
LAKE PROVIDENCE, PARISH OF CARROLL,
*April 16th*, 1873.

I have this day seized the store and contents of Elton plantation, know as the "Elton store," being the property of which W. L. McMillen represents himself to be the owner, and shall sell the same at the premises, according to law, on Saturday, the third day of May, 1873, or so much thereof as shall satisfy the amount due for State license for the year ending December 31st, 1873, and all legal costs and charges. Terms of sale, cash on the spot.

R. K. ANDERSON,
*Tax-Collector.*

J. E. LEONARD, sworn, states that he heard the defendant announce publicly that he would first sell the front door of the plaintiff's store-building. The statement was made seriously as far as witness could understand. That he, witness, bet the defend't twenty dollars that he would not do it, which bet defdt. accepted.

Cross-ex.:

Witness states that he is attorney for plaintiff; that what he
25 has done in this proceeding he did as attorney for plaintiff.

Both parties admit that Anderson holds a commission as tax-collector, signed by W. P. Kellogg, as governor of the State of Louisiana, issued in the usual form; that he has taken the oath of office mentioned in the constitution of the State of Louisiana, and is required of all legal officers to take.

It is admitted that the defendant assumed to proceed to collect the license in controversy, under what is known as an act to enforce the payment of taxes due the State, &c., approved Mar. 14, 1873, by W. P. Kellogg, as governor of Louisiana.

R. K. ANDERSON, sworn by plaintiff, testifies. We wrote up a notice of seizure, and gave it to John Miller, with instructions to give it to Mr. Myers, acting as agent for Mr. McMillen. The notice contained, as near as witness can recollect, a notification that I had seized the building of

W. L. McMillen, with its contents, and would sell so much, after legal advertizing, as would pay his State and parish license for the year ending Dec. 31st, 1873. Witness never made an inventory of the store
26 and contents, but did make an inventory of such goods as he seized and moved from the store.

Witness never made an appraisement of goods seized by sworn appraisers, but that he estimated the value of the articles seized, by the aid of those other assistants who were not sworn.

Witness thinks it was about the 16th or 17th of April, 1873, that the first seizure was made. The plaintiff, W. L. McMillen, has pursued the business of selling spirituous liquors during the present year; he demanded of plaintiff his license-tax for the present year as a retail merchant, and retail dealer in spirituous liquors. Witness made this demand on W. L. McMillen in person, and of his agent, Mr. Myers.

Defendant here offers letter from W. L. McMillen, marked "B."

NEW ORLEANS, *April* 12, 1873.

Mr. R. K. ANDERSON,
*Lake Providence, La.:*

SIR: I have received a written notice from you that my State and parish licenses are due, and, if not paid within ten days, that I will be proceeded against according to law.

I paid my parish license to Mr. Rhodes, tax-collector, some time
27 ago. I cannot pay my State license, for the reason that I do not recognize you as having been appointed by competent authority.

According to law, tax-collectors are appointed by the governor and confirmed by the senate. You hold your appointment from one W. P. Kellogg, who, conspiring with United States district judge Durell and others, has usurped the government of this State, and, against the will of a majority of the people thereof, is assuming to exercise the functions of government. Under our constitution the choice of the governor is vested in the qualified electors of the State. Art. 48 requires that the returns of every election for governor "shall be sealed up and transmitted by the proper returning-officer to the secretary of state, who shall deliver them to the speaker of the house of representatives." It makes it the duty of the members of the general assembly to examine and count the votes, and the person having the greatest number of votes for governor shall be declared duly elected. An election for governor was held in this State on the 4th day of November last. The returns of the votes cast at that election do not elect Mr. Kellogg. The general assembly which counted the votes declared that John McEnery was duly elected gov-
ernor.
28 The pretended legislature which declared that Mr. Kellogg had been elected had no returns, as required by art. 48; did not examine and count the votes, and consequently had no legal data upon which to base their declaration. Mr. Kellogg, therefore, had no legal standing as governor, and consequently no legal authority to appoint tax-collectors or other officers.

Should you, in the prosecution of your pretended duties, trespass upon, or seize, or sell any property belonging to me, you must do so at your own peril. I will hold you and any who may assist you to strict account for trespass and damage.

W. L. McMILLEN.

(Endorsed:) Filed June 3, 1873. C. E. Moss, jr., d'y clerk.

Witness further states that, in reply to his demand for licenses, Gen'l McMillen stated that he would first consult with his attorney; that he expected no relief from the State courts, but that if he found he could get the case into the Supreme Court of the United States, he should resist the tax.

29 Witness stated that he then served a notice to pay his license in person upon plaintiff. Gen'l McMillen then said that he expected to be absent some time, and that Mr. Myers was his agent and would represent him. Witness thinks he then waited something over ten days before he made the seizure.

When the seizure was made, he went to Mr. Myers, at the store of plaintiff, and demanded key; informed him that he came there to seize the store and contents for the license-tax due. To this Mr. Myers refused to give up the key, and stated that he did not recognize witness as having any authority. Witness then attempted to enter the store by force and was resisted by Myers, and did not succeed in entering the store. Witness then went and procured two other assistants; came back; Mr. Myers resisted again, and refused to tell where the key was. While Mr. Myers was being held by the assistants, witness removed one of the window-sash without breaking or damaging it in any particular. Myers then sent, got the key, and gave witness, who unlocked the door and went in. Witness then told Mr. Myers to point out enough property to satisfy the amount for the licenses, which he did.

Witness left custodians in charge of the property seized and
30 pointed out by plaintiff, and gave Mr. Myers permission to go on and sell anything else, which he did.

Witness states that he did not move any of the goods, or make any inventory or appraisement at this time, it being late, but went away. On returning the next morning, he found his custodian locked out of the store. Mr. Myers refused to give witness or his custodian the key to the store. Witness found the store windows and doors barred, and proceeded to break in and remove from the store of the goods seized what he estimated to be about two hundred dollars' worth. Witness made an inventory of the goods seized, and, with the assistance of two others, estimated the value.

Witness still holds the property seized, subject to the order of the court.

Witness states that he ascertained the amount of license due by admissions, enquiries, and general authority; that there is no record in the tax-collector's office, that witness knows of, which declares any license due by Gen'l McMillen.

Witness states that he never, after he began to make these seizures, was able to get into the store without breaking in. He got near there on several occasions, but always found the store closed when he
31 got there. Admitted that the document A, the advertisement that appears in the record, appeared in the Lake Republican on the 19th of April 1873.

A. A. HARNEY, sworn, states that he was left at Gen'l McMillen's store with Mr. Sweet, another deputy tax-collector, as keeper of the property seized; that they were both forcibly ejected from the store by Mr. Myers, agent for plaintiff, who was assisted by several others. Mr. Anderson, in making the seizure, used no violence and no more force than was absolutely necessary, being constantly resisted by the agent. States they were not ejected from the inside of the building, but from the gallery; was kept from going from the gallery into the store. No violence was used to keep witness from going out of the building, but violence was

used to keep him from going back. He had been in possession and inside of the store one night, but, having stepped to the gallery, Mr. Myers' agent caused others to hold witness while he went into the store and closed it up.

C. J. SWEET, sworn, states that he acted as custodian of the
32 property seized of W. L. McMillen for license-tax; was present at the time of seizure; thinks that Mr. Anderson made use of no more force than was necessary to get possession of the property, being constantly resisted by the agent; says he never was there at plaintiff's store but once when the defendant made a seizure, but does not of his own knowledge know whether he was resisted or not at any other time.

JAMES WALKER, sworn, states Mr. Myers said he wanted some of the boys to hold them fellows while he got into the store. They went to the store. Mr. Sweet, one of the keepers, tried to unlock the door. Mr. Myers said, "Let me unlock it for you." Mr. Sweet gave him the key, which Mr. Myers put in his pocket, and said, "You're the sheriff, but I have got the key."

Cross-ex:

Was present when Mr. Anderson broke into the store. He struck the window with an axe very rough, broke some glass, and injured the window more than he would if he had not been mad. He could have got into the store with less breaking.

Re-examined:

33 Witness states this was the second time that Mr. Anderson went into the store. Mr. Myers got possession of the key as stated above.

ELLIS RICE, sworn, states Mr. Myers directed witness to hold the keeper at McMillen's store while he, Myers, locked up the store with the keeper outside.

Testimony closed.

I certify that the above and foregoing is all the evidence adduced on the trial of the above-styled suit this the 3d day of June, A. D. 1873.

C. E. MOSS, JR.,
*D'y Clerk.*

(Endorsed:) Filed June 3, 1873. C. E. Moss, jr., d'y clerk.

*Minutes, June* 6, 1873.

W. L. MCMILLEN
*vs.* } 6060.
R. K. ANDERSON.

Judgment for defendant. (See decree.)

*Judgment.*

13 district court, parish Carroll.

W. L. MCMILLEN
*vs.* } 6060.
ROBT. K. ANDERSON.

34 This case being tried in its order, the law and the evidence

being in favor of the defendant and against the plaintiff, it is therefore, by reason thereof, ordered, adjudged, and decreed that the injunction herein sued out be dissolved, with one hundred dollars special damages as attorneys' fees and one hundred per cent. upon the amount of the license due.

That defendant proceed to sell the property seized to pay the license due, with all costs as provided by law.

Done and signed in open court this 6th day of June, 1873.

WADE H. HOUGH,
*Judge* 13 *District.*

(Endorsed:) Filed June 6, 1873. W. M. Abbott, d'y clerk.

*Bill of exceptions.*

STATE OF LOUISIANA,
*Parish of Carroll:*

13 dist. court.

W. L. McMILLEN
*vs.* } 6060.
R. K. ANDERSON.

Be it remembered that on the trial of the above cause the
35 plaintiff offered to prove that W. P. Kellogg had never been elected governor of Louisiana, and asked leave of the court to offer in evidence the official returns of the election held in said State on the 4th day of November, 1872, as the same appeared in the United States Senate document known as the Louisiana investigation, p. 81, by which said returns it appears that John McEnery had received 65,579 votes, while W. P. Kellogg received only 55,973 votes; and plaintiff further asked leave of the court to offer in evidence the official declaration and announcement of the votes on the 11th of December, 1872, by the returning-officers of the State known as the Forman board, which said official declaration and announcement is as follows, as the same appears in the Senate document aforesaid, page 83:

"We, the undersigned returning-officers, pursuant to authority vested in us by act No. 98 of 1872, approved Nov. 20, 1872, do hereby certify that the foregoing is a true and correct compilation of the statement of votes cast at an election for State officers and Representatives in Congress, held in the various parishes of the State of Louisiana on the 4th day of November, 1872, as made by the supervisors of regis-
36 tration of said parishes; and we do hereby declare that the following-named persons were duly and lawfully elected to the offices set against their names respectively, to wit:

"John McEnery, governor, etc.

(Signed) "ARCHIBALD MITCHELL.
"B. R. FORMAN.
"S. M. THOMAS.
"O. F. HUNSUCKER.
"S. M. TODD."

But the court refused to admit the said testimony, on the ground that W. P. Kellogg is governor of Louisiana de facto, and that the manner of his induction into office cannot be enquired into by the courts in a suit between third parties. Plaintiff further offered to prove on the trial

aforesaid, by various extracts from the Senate document aforesaid, that a quorum of both houses of the general assembly, shown by the returns to have been elected, never met at the Mechanics' Institute, and that those who did meet had therefore no authority to pass laws which should be binding upon the people of the State of Louisiana. But the court refused to receive the said evidence, on the ground that the manner in which
37 the general assembly which met at the Mechanics' Institute was organized and constituted could not be enquired into by the courts. To all of which rulings the plaintiffs excepted, and now enters this his bill of exceptions, to be signed, which is accordingly done the 6th day of June, 1873.

WADE H. HOUGH,
*Judge* 13 *District.*

(Endorsed:) Filed June 6th, 1873. W. M. Abbott, d'y clerk.

*Minutes, June* 7, 1873.

W. L. McMillen
*vs.*
R. K. Anderson.

On motion of J. E. Leonard, atty. for plaintiff, it is ordered that plaintiff have a suspensive appeal from the judgment rendered in this case upon giving bond and solvent security in the sum of one thousand dollars, and a devolutive appeal upon giving bond in like manner in the sum of two hundred dollars, said appeal to be returnable to the supreme court, at New Orleans, on the second Monday in February, A. D. 1874.

38 *Appeal-bond.*

STATE OF LOUISIANA,
*Parish of Carroll:*

13 district court.

W. L. McMillen
*vs.*
R. K. Anderson. No. 6060.

Know all men by these presents, that we, William L. McMillan, as principal, and J. W. Montgomery and Ferd. M. Goodrich, as security, are held and bound unto David Jackson, clerk of the said court, in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said David Jackson, clerk, or his successors in office, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, and assigns, firmly by these presents, this the 10th day of June, A. D. 1873.

Whereas the above-bound William L. McMillen has applied for and obtained an order for a suspensive appeal from the judgment rendered against him in the above-entitled cause.

Now, if the said William L. McMillen shall well and truly prosecute his said appeal, and shall satisfy whatever judgment may be rendered against him by the appellate court, and shall pay all costs, as
39 well those of the district court as those of the appeal, then this obligation to be void; otherwise to remain in full force and virtue,

and the said sureties shall be liable in place of and as well as the said principal.

W. L. McMILLEN,
By his atty. at law, J. E. LEONARD.
J. W. MONTGOMERY.
FERD. M. GOODRICH.

(Endorsed:) Approved and filed June 14, 1873. Wm. Abbott, d'y clerk.

I, David Jackson, clerk of the thirteenth judicial district court of Louisiana, in and for parish of Carroll, do hereby certify that the foregoing thirty-three pages contain a full, true, and correct and perfect manuscript of all the documents filed, all the evidence adduced, all the orders entered, and all the proceedings had in the suit wherein William L. McMillen is plaintiff and Robert K. Anderson is defendent, being known and numbered as 6060 on the docket of the district court of Carroll Parish.

In testimony whereof I have hereunto set my hand and annexed
40 my seal of office this third day of February, A. D. 1874.

(Signed) [SEAL.] DAVID JACKSON, *Clerk*,
By S. J. GALBRAITH, *D'y Clerk*.

Supreme court of the State of Louisiana, holding sessions at the city of New Orleans.

TRANSCRIPT OF APPEAL.

Filed February 13th, 1874.
(Signed) M. P. JULIAN,
*D'y Clerk*.

*Case submitted.—Minutes.—Saturday, February 21st*, 1874.

The court was duly opened. Present, their honors—
John T. Ludeling, chief-justice;
James G. Taliaferro, associate justice;
William G. Wyly, " " , and
Philip H. Morgan, " "
Absent, Rufus K. Howell, " "

41 WILLIAM L. McMILLEN
*vs.*
ROBERT K. ANDERSON. } No. 5102.

This case was called for trial, and submitted to the court upon briefs to be filed by counsel within five days.

*Opinion of the court.—Filed March 9th*, 1874.

WILLIAM L. McMILLEN
*vs.*
R. K. ANDERSON, TAX-COLLECTOR. } No. 5102.

Mr. Chief-Justice Ludeling delivered the opinion and decree of the court in the words and figures following, to wit:

The plaintiff enjoined the defendant from selling his property, seized

under act No. 47 of 1873, to pay licenses due by him as a retail merchant and a retail dealer in spirituous liquors. There was judgment in favor of the defendant and against the plaintiff, dissolving the injunction with damages, and the plaintiff has appealed.

42 From the record it appears that R. K. Anderson was discharging the duties of the office of tax-collector in and for the parish of Carroll and State of Louisiana, under a commission issued in due form, 1873; that having demanded payment of the licenses due by W. L. McMillen as a retail merchant and retail dealer in spirituous liquors, he, in a letter to Anderson, refused to pay them to R. K. Anderson, on the grounds that the said Anderson was not legally authorized to collect them, as, he alleged, Governor Kellogg had no authority to appoint tax-collectors, being himself a usurper; and he threatened Anderson with a suit for damages if he trespassed upon his property by attempting to seize it. It further appears that the tax-collector afterwards called upon the agent of W. L. McMillen to point out property, who first refused and offered to make resistance to the officer, but afterwards he did point out property, which the collector seized, and he appointed a keeper thereof. On the next day the said agent of McMillen, with others aiding him, drove said keeper from the premises, and he

43 then barricaded windows and locked the doors, whereupon the tax-collector returned and used force to effect an entrance into the building, and again made a seizure of property to satisfy the taxes due by said McMillen.

It is urged that the action of the officer was harsh and oppressive, and in violation of article IX of the Constitution. We have failed to discover wherein the Constitution has been violated by the defendant, or the law of the State under which he was acting. The only violator of law in these proceedings appear to have been the plaintiff, or his agent, in resisting, by force, an officer in the discharge of his official duties.

The plaintiff further objects, that the defendant is attempting to take plaintiff's property without due process of law. Although "due process of law" generally implies and includes regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceeding, yet this is not universally true. It does not apply to proceedings to collect the public revenue. (11 Mich., 139; 18 How., 272; 2 Zey., 260, 599; 4 Hill, 146.) The revenue bill fixes the amounts of the

44 license-taxes due by retail merchants, and of retailers of spirituous liquors, and the act No. 47, of 1873, provides the manner in which taxes and licenses shall be collected from delinquent parties. This is sufficient. It is the mode provided by the legislator for enforcing a right of the sovereign, and is due process of law.

On the trial, bills of exceptions were taken to the rulings of the district judge refusing to receive testimony in regard to the election of Governor Kellogg, &c., on the ground that the right of an officer to a position which he holds cannot be inquired into, or his action be declared null, in a suit between third parties. The ruling is correct, being in accord with the well-settled jurisprudence of this State. (13 An., 403; 22 An., 33; 25 An., 263, 267.)

The appeal is frivolous. It is therefore ordered and adjudged that the judgment appealed from be affirmed, and costs of appeal.

45 *Judgment and decree.—Minutes.—Monday, March 9th*, 1874.

The court was duly opened pursuant to adjournment.

Present their honors—

John T. Ludeling, chief-justice,

and the said sureties shall be liable in place of and as well as the said principal.

W. L. McMILLEN,
By his atty. at law, J. E. LEONARD.
J. W. MONTGOMERY.
FERD. M. GOODRICH.

(Endorsed:) Approved and filed June 14, 1873. Wm. Abbott, d'y clerk.

I, David Jackson, clerk of the thirteenth judicial district court of Louisiana, in and for parish of Carroll, do hereby certify that the foregoing thirty-three pages contain a full, true, and correct and perfect manuscript of all the documents filed, all the evidence adduced, all the orders entered, and all the proceedings had in the suit wherein William L. McMillen is plaintiff and Robert K. Anderson is defendent, being known and numbered as 6060 on the docket of the district court of Carroll Parish.

In testimony whereof I have hereunto set my hand and annexed
40 my seal of office this third day of February, A. D. 1874.
(Signed) [SEAL.] DAVID JACKSON, *Clerk*.
By S. J. GALBRAITH, *D'y Clerk*.

Supreme court of the State of Louisiana, holding sessions at the city of New Orleans.

TRANSCRIPT OF APPEAL.

Filed February 13th, 1874.
(Signed) M. P. JULIAN,
*D'y Clerk*.

*Case submitted.—Minutes.—Saturday, February 21st*, 1874.

The court was duly opened. Present, their honors—
John T. Ludeling, chief-justice;
James G. Taliaferro, associate justice;
William G. Wyly, " " , and
Philip H. Morgan, " "
Absent, Rufus K. Howell, " "

41 WILLIAM L. McMILLEN
*vs.*
ROBERT K. ANDERSON. } No. 5102.

This case was called for trial, and submitted to the court upon briefs to be filed by counsel within five days.

*Opinion of the court.—Filed March 9th*, 1874.

WILLIAM L. McMILLEN
*vs.*
R. K. ANDERSON, TAX-COLLECTOR. } No. 5102.

Mr. Chief-Justice Ludeling delivered the opinion and decree of the court in the words and figures following, to wit:

The plaintiff enjoined the defendant from selling his property, seized

under act No. 47 of 1873, to pay licenses due by him as a retail merchant and a retail dealer in spirituous liquors. There was judgment in favor of the defendant and against the plaintiff, dissolving the injunction with damages, and the plaintiff has appealed.

42 From the record it appears that R. K. Anderson was discharging the duties of the office of tax-collector in and for the parish of Carroll and State of Louisiana, under a commission issued in due form, 1873; that having demanded payment of the licenses due by W. L. McMillen as a retail merchant and retail dealer in spirituous liquors, he, in a letter to Anderson, refused to pay them to R. K. Anderson, on the grounds that the said Anderson was not legally authorized to collect them, as, he alleged, Governor Kellogg had no authority to appoint tax-collectors, being himself a usurper; and he threatened Anderson with a suit for damages if he trespassed upon his property by attempting to seize it. It further appears that the tax-collector afterwards called upon the agent of W. L. McMillen to point out property, who first refused and offered to make resistance to the officer, but afterwards he did point out property, which the collector seized, and he appointed a keeper thereof. On the next day the said agent of McMillen, with others aiding him, drove said keeper from the premises, and he

43 then barricaded windows and locked the doors, whereupon the tax-collector returned and used force to effect an entrance into the building, and again made a seizure of property to satisfy the taxes due by said McMillen.

It is urged that the action of the officer was harsh and oppressive, and in violation of article IX of the Constitution. We have failed to discover wherein the Constitution has been violated by the defendant, or the law of the State under which he was acting. The only violator of law in these proceedings appear to have been the plaintiff, or his agent, in resisting, by force, an officer in the discharge of his official duties.

The plaintiff further objects, that the defendant is attempting to take plaintiff's property without due process of law. Although "due process of law" generally implies and includes regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceeding, yet this is not universally true. It does not apply to proceedings to collect the public revenue. (11 Mich., 139; 18 How., 272; 2 Zey., 260, 599; 4 Hill, 146.) The revenue bill fixes the amounts of the

44 license-taxes due by retail merchants, and of retailers of spirituous liquors, and the act No. 47, of 1873, provides the manner in which taxes and licenses shall be collected from delinquent parties. This is sufficient. It is the mode provided by the legislator for enforcing a right of the sovereign, and is due process of law.

On the trial, bills of exceptions were taken to the rulings of the district judge refusing to receive testimony in regard to the election of Governor Kellogg, &c., on the ground that the right of an officer to a position which he holds cannot be inquired into, or his action be declared null, in a suit between third parties. The ruling is correct, being in accord with the well-settled jurisprudence of this State. (13 An., 403; 22 An., 33; 25 An., 263, 267.)

The appeal is frivolous. It is therefore ordered and adjudged that the judgment appealed from be affirmed, and costs of appeal.

45 *Judgment and decree.—Minutes.—Monday, March 9th*, 1874.

The court was duly opened pursuant to adjournment.

Present their honors—

John T. Ludeling, chief-justice,

James G. Taliaferro, ass. justice.
Rufus K. Howell, " "
William G. Wyly, " "
Philip H. Morgan, " "

His honor the chief-justice delivered the judgment and decree of the court in the following case:

WILLIAM L. McMILLEN
*vs.*
ROBERT K. ANDERSON. } No. 5102.

Appeal from the thirteenth judicial district court, parish of Carroll.

It is ordered and adjudged that the judgment appealed from be affirmed, and costs of appeal.

46 *Certificate of the clerk.*

I, John Miller Howell, clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans, do hereby certify that the foregoing forty-five pages contain a full, true, and complete copy of the transcript of the proceedings had in the thirteenth judicial court for the parish of Carroll, in a certain suit wherein William L. McMillen was plaintiff and Robert K. Anderson was defendant, and also of all the proceedings had in this supreme court on the appeal taken by said plaintiff, which said transcript of appeal is now on the files of this honorable court, under number 5102.

In testimony whereof I have hereunto set my hand and affixed the seal of this honorable court at the city of New Orleans this 30th day of May, A. D. 1873.

[SEAL.] JNO. M. HOWELL, *Clerk.*

47 *Certificate of the judge.*

I, John T. Ludeling, chief-justice of the supreme court of the State of Louisiana, do hereby certify that John Miller Howell is clerk of the supreme court of the State of Louisiana, holding sessions at the city of New Orleans; that the signature of him, the said John Miller Howell, to the within certificate is in the proper handwriting of him, the said clerk, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, this 30th day of May, A. D. 1873.

[SEAL.] JNO. T. LUDELING,
*Chief-Justice S. Court of Louisiana.*

48 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Louisiana, and holding sessions in New Orleans, Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William L. McMillen, plaintiff, and Robert K. Anderson, defendant,

wherein was drawn in question the validity of a statute of, and an authority exercised under, the said State of Louisiana, on the ground of their being repugnant to the Constitution and laws of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage of the said William L. McMillen, as by his complaint appears; we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court of the United States, this second Monday of October, in the year of our Lord one thousand eight hundred and seventy-three.

[SEAL.] F. A. WOOLFLEY,
*Clerk of the United States Circuit Court for the District of Louisiana.*

Allowed.

JNO. T. LUDELING,
*Chief-Justice Supreme Court of Louisiana.*

(Indorsed:) No. William L. McMillen, plaintiff in error, versus Robert K. Anderson, defendant in error. Writ of error. Filed March 19th, 1874. M. P. Julian, d'y clk.

49 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Robert K. Anderson, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the 2nd Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, wherein William L. McMillen is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said William L. McMillen, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 19th day of March, in the year of our Lord one thousand eight hundred and seventy-four.

JNO. T. LUDELING,
*Chief-Justice Supreme Court of Louisiana.*

50 STATE OF LOUISIANA,
*Parish of Carroll:*

Before me, the undersigned authority, personally came and appeared Nicholas Burton, sheriff of the parish of Carroll, Louisiana, and to me well known, who, being sworn, deposes and says that he did, on the 30th

day of March, A. D. 1874, serve a true copy of the within citation upon Robert K. Anderson, the defendant in error, named therein, in person, at his office in the town of Providence, Louisiana.

NICHOLAS BURTON, *Shff.*

Sworn to and subscribed before me this 1st day of April, A. D. 1874.

C. E. MOSS, JR.,
*Parish Judge in & for the Parish of Carroll, State of Louisiana.*

(Indorsed:) Supreme court. No. 5102. William L. McMillen vs. Robt K. Anderson. Citation. Sheriff's return. Sup. court of La. Filed March 19th, 1874. M. P. Julian, d'y clk.

51 Know all men by these presents that we, William L. McMillen as principal, and H. C. Warmoth and J. E. Leonard as sureties, are held and firmly bound unto Robert K. Anderson in the full and just sum of one thousand dollars, to be paid to the said Robert K. Anderson, certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents, sealed with our seals and dated this 19th day of March, in the year of our Lord one thousand eight hundred and seventy-four.

Whereas lately, at a supreme court of the State of Louisiana, in a suit depending in said supreme court, wherein William L. McMillen was plaintiff and Robert K. Anderson deft., judgment was rendered against the said William L. McMillen, and the said William L. McMillen having obtained a writ of error with supersedeas, and filed a copy thereof in the clerk's office of the said supreme court to reverse the judgment in the aforesaid suit, and a citation, directed to the said Robert K. Anderson, citing and admonishing him to be and appear at a Supreme Court of the United States, to be holden at Washington the 2nd Monday of October next.

Now, the condition of the above obligation is such that if the said William L. McMillen shall prosecute his writ to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

W. L. McMILLEN,
By his Atty., J. E. LEONARD. [L. S.]
H. C. WARMOTH. [L. S.]
J. E. LEONARD. [L. S.]

Sealed and delivered in the presence of—
J. H. WARMOTH.
M. A. SOUTHWORTH.

Approved, this 19th March, 1874.
JNO. T. LUDELING, *Chief-Justice S. C. of La.*

(Indorsed:) United States circuit court. No. Bond for writ of error. Filed March 19th, 1874. M. P. Julian, d'y clerk.

(Indorsement on cover:) No. 262. William L. McMillen, plaintiff in error, vs. Robert K. Anderson. Louisiana sup. ct. Filed 24th September, 1874.

16 Iowa
18 How
Rev Stat Iowa

IN THE

# Supreme Court of the United States.

No. 12.—October Term, 1877.

**WILLIAM L. McMILLEN**

**vs.**

**ROBERT K. ANDERSON.**

***BRIEF OF PLAINTIFF IN ERROR.***

J. E. LEONARD,

Counsel for Plaintiff in Error.

Joseph L. Pearson, Printer, 9th and D streets, Washington.

IN THE

# Supreme Court of the United States.

No. 12.—October Term, 1877.

WILLIAM L. McMILLEN
*vs.*
ROBERT K. ANDERSON.

## *Brief of Plaintiff in Error.*

### Abstract of the Case.

This is a suit for trespass, the allegations of the petition being that the defendant, on the 19th day of April, 1873, broke into the plaintiff's store and carried away certain merchandise worth five hundred dollars. An injunction was also asked for and obtained, "upon plaintiff giving bond and solvent security in the sum of $10,000," restraining the defendant from further trespass and from advertising and selling the property which he had already seized. Plaintiff lays his damages, compensatory and punitive, at ten thousand dollars.—(See petition, record, p. 1–3.)

The defendant's justification is that in doing the acts complained of he was acting within the sphere of his official duties as tax-collector of the parish of Concordia, Louisiana. —(See answers, pp. 7, 8.)

After hearing the evidence, which appears on pages 9–13 of the record, the court gave judgment in favor of the defendant, "with one hundred dollars special damages as attorney's fees and one hundred per cent. upon the amount of the license due."—(p. 14.) This judgment was subsequently affirmed by the Supreme Court of Louisiana.—(See opinion and decree, pp. 16–18.)

It was urged by the plaintiff, both in the district and the supreme court of the state, that the State of Louisiana, through her agent, the defendant, was attempting to deprive the plaintiff of his property without due process of law, in violation of the fourteenth amendment to the Constitution of the United States. This question was finally decided by the state courts adversely to the pretensions of the plaintiff, and is now brought here for review. The law of Louisiana under which the defendant acted (see admission, record, p. 10), and the validity of which is drawn in question in this case, is as follows:

ACT OF MARCH 14, 1873.

"That in all cases of neglect or refusal to pay their licenses of any description by any person, firm, company, or corporation doing business in this state, the tax-collector shall give ten days' written or printed notice to such delinquent tax-payer to pay such licenses, if such delinquent can be found; otherwise, the notice shall be given by publication for ten days in the official journal, if there be one in the parish; if there be no official journal published in the parish, the notice may be posted at the court-house door; and if at the expiration of said notice the license, together with all costs, be not fully paid, the tax-collector may, without any judicial formality, proceed to seize and sell, after ten days' advertisement, the property, rights, and credits of such delinquent tax-payer, or so much thereof as may be necessary to satisfy the claims of the state as aforesaid, together with all the costs and charges.

"That all causes which may be commenced hereafter in any of the courts of this state, in which it is sought to enjoin the collection of any licenses or taxes whatever, whether state or parish, general or special, imposed by com-

petent authority, shall be regarded as preference cases, and the court shall proceed to final trial and determination of the same at the earliest moment compatible with the ends of justice; and tax-collectors shall not be liable for damages for prosecuting such cases; and upon a dissolution of any injunction hereafter granted to enjoin or delay the collection of any such taxes so levied or imposed upon any person or property in this state, the court ordering such injunction to be dissolved shall enter a decree against the person or persons suing out the same, and his or their securities on their injunction bond for the sum of one hundred per centum on the amount of all taxes the collection of which was so delayed or enjoined, and all costs of suits, and said decrees shall be enforced as other decrees are enforced, and the money collected and paid into the proper treasury.

"That the tax-payers who are now or shall become delinquents by the non-payment of taxes on real estate, as provided for in this act, and shall have been so returned upon the rolls of the tax-collector to the auditor of public accounts, the auditor shall publish in the official journal of the parish in which such delinquent resides, or by public notice, when there is no official journal, by three insertions within ten days, the name, residence of, and amount due from such delinquent tax-payer, and such delinquent tax-payer shall after thirty days forfeit his right to bring suit or be a witness for or in his own behalf before any justice, parish, district, or state court, and every court having jurisdiction within the state shall deny and refuse to issue a civil process of any kind or nature whatever in his own name or for his own benefit, until he shall, if a resident of the parish of Orleans, have procured from the auditor of public accounts, or, if a resident of a country parish, from the tax-collector thereof, a certificate setting forth that all such claims for delinquent taxes and costs thereon against such delinquent tax-payer have been paid."—(Acts of La., p. 98.)

The revenue bill, which, in the language of the Supreme Court of Louisiana, "fixes the amounts of the license-tax due by retail merchants and retailers of spirituous liquors," is Act No. 14, of 1872, which provides as follows:

"There shall be levied and collected an annual amount as a license or tax * * * from each and every retail mer-

chant, fifteen dollars; * * * from the proprietors of all coffee houses, beer saloons or gardens, or cabarets, eighty-five dollars; all retail groceries selling by the glass shall pay in addition to the grocery license a coffee-house license,"—

making the sum of one hundred dollars as the amount of tax claimed to be due upon the business of the plaintiff.

These statutes constitute the entire legislation under which the proceedings of the tax-collector are justified. There are no other laws on the subject of the revenue which have any bearing upon the case or which were involved in its decision.

## Assignment of Error.

The plaintiff assigns for error the ruling of the Supreme Court of Louisiana, that the statute of that state above quoted, under which the defendant in error acted, deprived the plaintiff of his property by "due process of law only," and that said statute was not, therefore, in violation of the 14th Amendment to the Constitution of the United States. —(See opinion and decree, record, p. 17.)

## Argument.

1st. Although taxes may be collected summarily and without the aid of the courts, yet there must be "due process" of some kind. It is not in the power of the legislature to make any process "due process of law."—(*Murray's Lessee* v. *Hoboken Land Co.*, 18 How., 272; *Allen* v. *Armstrong*, 16 Iowa, 508; Ervine's Appeal, 16 Pa. State, 256.) The so-called "license," the collection of which is resisted by the plaintiff, is, in reality, a tax. A license to sell liquor is granted only by the parish; the state then taxes the occupation or traffic.—(Revised Statutes of La., sec. 2,779.)

2d. The law above quoted deprives plaintiff of his property without due process of law, because it condemns him without a hearing. The law fixes the tax to be paid by retail liquor dealers, but no method is pointed out by which

it may be ascertained whether a particular person is a liquor dealer or not. No one can be condemned without an opportunity to be heard.—(*Fisher* v. *McGivin*, 1 Gray, 1.)

3d. If the tax-collector's proceedings were authorized by the law (and the state court has decided that they were), then the officer was armed by the statute with a general search warrant, and that, too, unsupported by oath.—(*Entick* v. *Carrington*, 19 Howard's State Trials, p. 1,010; 15 Gray, 445; *Attorney-General* v. *Racine*, 4 M. & W., 419.)

4th. The legislature cannot change the legal presumptions of evidence. It cannot declare that an individual shall be deemed to be guilty of a particular crime or to owe a particular debt until he proves the contrary.—(*Wynehamer* v. *People*, 13 N. Y. (Kernan), 447.)

5th. The plaintiff was not permitted under the law of Louisiana to contest the claim of the state until he had given security for the payment of costs and penalties as a condition for having a hearing.—(Louisiana Code of Practice: Of Injunctions, art. 304.) The law, therefore, establishes one rule for the rich and another for the poor. He who has neither wealth nor wealthy friends to become his sureties is not allowed a hearing under any circumstances. This is not "due process of law."—(*Greene* v. *Briggs*, 1 Curt. C. C., 325–6.)

J. E. LEONARD,
*Counsel for Plaintiff in Error.*

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